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Rupert B. Hurley Jr.
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July 18, 2007
DATE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : RAMESH et al.

Group Art Unit: 3721

Serial No : 09/764,673

Examiner: C.R. Harmon

Filing Date: Jan. 18, 2001

Attorney Docket No.: 42035-06

For: BACKSEAMED CASING AND PACKAGED PRODUCT INCORPORATING SAME

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REPLY BRIEF UNDER 37 CFR § 41.41

Sir:

This Reply Brief is filed in response to the Examiner's Answer mailed May 18, 2007. As this Reply Brief is being mailed within two months of the date of the Examiner's Answer, entry of this Reply Brief is respectfully requested.

I. Remarks

This appeal can be resolved with a decision on one point: whether ANDERSON discloses wrapping a film around a forming shoe. The portion of ANDERSON relied upon is FIG. 13 of ANDERSON together with the pertinent text, as follows:

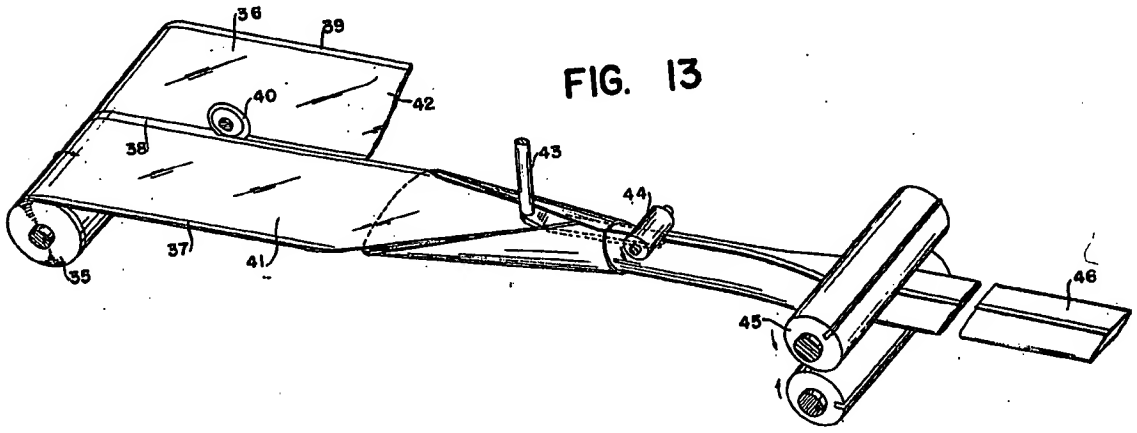


FIG. 13

> After the web is severed longitudinally, the individual narrower webs may be passed to a folding and sealing station wherein the marginal edge portions are overlapped and bonded together. Thus in FIG. **13**, the web **41**, for example, moves through a heat sealing station comprising opposed elements **43**, **44**, for applying heat and pressure. The web 41 is formed into a loose-bonded, multi-layer tube, of a cross-section similar to that shown in FIG. 5, and, where desired, a suitable rotary shear may be provided to sever the tubes 46 into short sections suitable for making into bags. [ANDERSON, Col. 5, lines 14-24]

A significant difference between ANDERSON and each of Appellants' independent claims is that ANDERSON does not teach "...wrapping the film longitudinally around a forming shoe...." Appellants' independent claims recite the film as being wrapped around the forming shoe. The problem solved by Appellants' invention is that the heat-shrinkable film recited in each of Appellants' independent claims does not shrink down tight against the forming shoe when the backseam is made.

Those of skill in the art know that the forming shoe is that portion of a backseaming machine that a film typically wraps around so that the resulting backseamed casing has a desired size and a uniform size. The problem Appellants have solved is the necking down of the film against the forming shoe so that the film becomes difficult or impossible to forward off of the forming shoe. Appellants have discovered that an inner film layer that contains polyamide and/or polyester and that has a thickness of at least 5% of the total film thickness prevents the occurrence of the necking-down-on-the-forming shoe problem. Appellants' claims are not directed to a process in which the film is sealed while it does not wrap around a forming shoe. In ANDERSON, the film is not wrapped around a forming shoe when it is sealed; rather, in ANDERSON, the film is positioned *inside* the forming shoe.

The Examiner's Answer acknowledges that in ANDERSON "...the web does wrap around the *inner* surface of the cylindrical portion of the former/shoe...." See Page 7 lines 14-16 of the Examiner's Answer, emphasis added. Of course, shrinking of the film in ANDERSON could not possibly result in the film necking down on the "cylindrical portion of the former/shoe" because, as admitted by the Examiner, the film in ANDERSON passes *inside* the cylindrical portion of the former/shoe. The film would have to pass *outside and around* the former/shoe in order to shrink and neck down tight against the former/shoe.

However, the Examiner's Answer attempts to avoid the conclusion that the film does not wrap around the forming shoe, by including the sealing member as a portion of the forming shoe, as follows:

> Regarding the limitation of wrapping "around" a forming shoe, note that the material is wrapped around the interior of the forming shoe and around the outside of forming shoe element 43 of Anderson, a critical element of the bag former; [Examiner's Answer, Page 7 lines 3-5]
>
> Regarding Anderson et al., the forming shoe includes forming surface 43 which extends inside (i.e., completely encircled) the longitudinally wrapped web in order to form the backseam. [Examiner's Answer, Page 7 lines 12-14]

The quotations above make it clear that the Examiner's Answer takes the position that element 43 is a part of the forming shoe and that the film wraps around element 43 and therefore ANDERSON discloses Appellants' recited feature of the film wrapping longitudinally around the forming shoe. However, this is contrary to ANDERSON itself, as ANDERSON does not refer to element 43 as the forming shoe:

> Thus in FIG. **13**, the web **41**, for example, moves through a heat sealing station comprising *opposed elements **43**, **44**, for applying heat and pressure.* [ANDERSON, at Col. 5 lines 17-19, italics added]

This statement in ANDERSON makes it clear that element 43 is an element of a heat sealing station, not a forming shoe. Even the Examiner's Answer acknowledges the cylindrical portion of the "former/shoe" in FIG. 13. Clearly, it is this cylindrical portion that is the forming shoe. Clearly, opposed elements 43, 44 of FIG. 13 of ANDERSON are the sealing means, ***not*** the forming shoe. As such, the film in ANDERSON is not wrapped around any portion of the forming shoe.

Appellants' claims are to be interpreted in the light of Appellants' specification. Thus, it is even more significant that Appellants' specification distinguishes between the forming shoe and the sealing means:

> In the production of backseamed casings (e.g., using a backseaming machine such as a Nishibe HSP-250-SA backseaming machine obtained from Nishibe Kikai Co. Ltd. of Nagoya, Japan), a flat sheet of film is folded longitudinally by passage over a "forming shoe". *A forming shoe is a part of the backseaming machine which the film is passed under and around,* i.e., so that the initially flat film is reconfigured as a tube, having a longitudinal overlap and seal therealong (lap-sealed backseamed casing), or with film longitudinal edges abutted against one another (butt-sealed backseamed casing), with the width of the tube being determined by the circumference of the forming shoe. A longitudinal lap or butt seal is then applied while the film is *between the forming shoe and a sealing device*, resulting in a lap-sealed backseamed casing, or a butt-sealed backseamed casing. [Appellants' Specification, Page 2 lines 2-12, emphasis added]

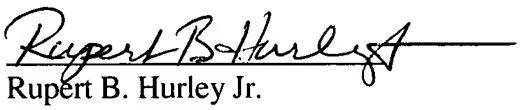
This portion of Appellants' specification refers to the forming shoe as that portion of the backseaming machine that the film is around: "*...A forming shoe is a part of the backseaming machine which the film is passed under and around....*" Futhermore, this portion of Appellants' specification clearly distinguishes between the forming shoe and the sealing device...i.e., the sealing device does not form a portion of the forming shoe: "*...the film is between the forming shoe and the sealing device....*" This passage clearly indicates that the sealing device and the forming shoe are separate elements of the backseaming machine.

II. CONCLUSION

Since the film in ANDERSON does not wrap around the forming shoe, no prima facie case of obviousness has been made out by the PTO, and Appellants' claims are patentable over the prior art. Appellants contend that all of the pending claims on appeal are in condition for allowance. Reconsideration of the patentability of the claims is respectfully requested, with a view towards reversal of the rejections. Should there be any

questions or comments, the Board is invited to contact the undersigned at the telephone number provided below.

Respectfully Submitted,



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18 July 2007